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5 Pro Se
6

7 **IN THE UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

ALBERT K. HEITZMANN,
an individual,
Plaintiff,

vs.

County of Maricopa,
a political subdivision of the
State of Arizona,
Defendant.

Case No.:

CIV '11 017 9 PHX JAT

COMPLAINT

9
10 **COMPLAINT:**

11 Misuse of *Franzi vs Superior Court, 1984*, to convict Heitzmann of perjury.
12

13 **BACKGROUND OF THE CASE:**

- 14 1. On December 13, 2006, Heitzmann testified at the murder trial of Mr. Paul
15 Speer. (CR2002-010926) He never told the jury Speer did not commit the murder.
16 2. In May, 2007, Heitzmann was charged with perjury. (CR2007-127543)
17 3. Heitzmann believed that perjury was defined by ARS13-2702 and, since he
18 did not commit perjury under that definition, took his case to trial.
19 4. On December 11, 2007, Heitzmann's Court told him there was a second
20 definition of perjury that, per a 1984 Superior Court Decision, a non-material
21 statement could be "defined" as material, and that he was to be charged under this
22 alternative definition. See Exhibit A: [Transcript of CR2007-127543/ December
23 11, 2007/ Page 3/ Lines 6 thru 23].

1 5. Heitzmann was not authorized to ask the Court to clearly identify the
2 Decision and asked his public defender. His public defender refused to give him
3 the title of the Decision. Over the course of the following year, Heitzmann's
4 attempts to identify the Decision were frustrated. Only when he received his
5 transcripts a year after the trial, was he able to identify it. It was *Franzi vs*
6 *Superior Court, 1984*.

7 6. Heitzmann spent over a year attempting to procure a copy of *Franzi* to see
8 how the State used it to supplement ARS13- 2702. Again, his attempts were
9 frustrated. Only when he was released from prison on May 16, 2010, was he able
10 to physically travel to a legal library and examine *Franzi*. He did so on May 18,
11 2010. Inspection of *Franzi* revealed that it was not an alternative definition of
12 perjury. It was a case involving confusion over court jurisdiction and had no
13 applicability to Heitzmann's case. Heitzmann's Court's use of *Franzi* to "define"
14 him to be guilty of perjury was not correct.

15 7. Per ARS12-821.01 Sections A & B, Heitzmann filed a claim against the
16 County of Maricopa requesting compensation in the amount of \$885,000 for the
17 885 days he was incarcerated:

18 [www.adc.state.az.us]/ [Heitzmann's ID: 228072]

19 Per Section B, the claim had to be filed within 180 days of May 18, 2010, the date
20 Heitzmann discovered his Court's incorrect ruling. Heitzmann filed his claim on
21 May 21, 2010, beating the deadline by 176 days. See Exhibit B: [NOTICE OF
22 CLAIM AGAINST MARICOPA COUNTY]

23 8. The Defendant is refusing to honor his claim by ignoring 12-821.01B. The
24 Defendant is incorrectly claiming that, since Heitzmann was damaged on
25 December 12, 2007, he should have filed his claim within 180 days of that date.
26 See Exhibit C: [June 28, 2010 letter from Maricopa County Risk Management]

WHEREFORE:

Plaintiff prays for judgment against the Defendant as follows:

Order the Defendant to either:

- * Explain how *Franzi* can be used to unambiguously “define” a non-material statement to be material, or

- * Honor Heitzmann’s claim and remit, in full, \$885,000 in compensation before February 24, 2012.

In exchange for either of these two forms of relief, Heitzmann offers to forgo all further monetary claims against the County of Maricopa for issues directly related to the misuse of *Franzi vs Superior Court* in this case.

DATED this 27 day of January, 2011.

By: _____

Albert K. Heitzmann

P.O. Box 7227

Phoenix, AZ 85011

Telephone: (602) 321-0615

E-mail: [albert.heitzmann@yahoo.com]

ORIGINAL and ONE COPY filed

this day of January, 2011, with:

Clerk of the Court

Sandra Day O’Connor U.S. Courthouse

401 West Washington Street,

Suite 130, SPC1

Phoenix, AZ 85003-2118

EXHIBIT A

1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA.
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Appellee,

vs.

ALBERT KARL HEITZMANN,

Appellant.

1 CA-CR 08-0228
CR2007-127543-001
DT

Phoenix, Arizona
December 11, 2007

10 JUN - 3 AM 9:40

BY MICHAEL J. JAMES, CLERK
FILED

BEFORE: THE HONORABLE ROSA MROZ, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Jury Trial)

DIVISION
COURT OF APPEALS
STATE OF ARIZONA
FILED

SEP 02 2008

PHILIP G. URRY, CLERK
By AL

JANELL ROSE, RPR
Certified Court Reporter #50455

Prepared for Appeal

DISCOVERY AND CONFIDENTIAL MATERIAL

SUPERIOR COURT

PAGE 1 of 3

EXHIBIT A EXHIBIT A

A P P E A R A N C E S

On Behalf of the State:

Jeannette Gallagher
Maricopa County Attorney's Office

On Behalf of the Defendant:

Candace Shoemaker
Attorneys at Law

I N D E X

CLOSING ARGUMENT BY MS. GALLAGHER	PAGE 18
CLOSING ARGUMENT BY MS. SHOEMAKER	62
REBUTTAL ARGUMENT BY MS. GALLAGHER	79

Exhibit A Exhibit 14

1 THE COURT: CR 2007-127543. State vs. Al
2 Heitzmann.

3 MS. GALLAGHER: Jeannette Gallagher.

4 MS. SHOEMAKER: Candace Shoemaker for Mr.
5 Heitzmann.

6 THE COURT: I need to put something on the record
7 I neglected to do yesterday with regard to the charge of
8 perjury. I need to define the statement to be material
9 before the jury can make an independent determination of
10 materiality.

11 Under Franzi vs. Superior Court, 139 Ariz. 556,
12 679 P2d 1043, 1984. Therefore, I am going to go ahead and
13 do that. I meant to do that yesterday, and I neglected to
14 do so.

15 I do find that the statement as charged in the
16 indictment to be a statement regarding a material --
17 preliminarily to be a statement of material issue.

18 So I think that's all I need to do under that
19 case law. Anybody else have any other requirements that
20 you think I should fulfill before I give the case to the
21 jury?

22 MS. GALLAGHER: I do not.

23 MS. SHOEMAKER: No, Your Honor.

24 THE COURT: Okay. One last thing to be placed on
25 the record I want to make sure that the jury instruction I

EXHIBIT B



EXHIBIT B

NOTICE OF CLAIM AGAINST MARICOPA COUNTY and/or MARICOPA COUNTY SHERIFF

DATE OF LOSS DEC. 12, 2007		TIME OF LOSS <input type="checkbox"/> AM <input type="checkbox"/> PM		LOCATION OF LOSS MARICOPA COUNTY SUPERIOR COURT	
CLAIMANT LAST NAME HEITZMANN		FIRST NAME ALBERT		DATE OF BIRTH 8-10-49	SOCIAL SECURITY # 527-86-407
TELEPHONE () -		ADDRESS P.O. Box 7227		CITY PHOENIX	STATE AZ
Home Work				ZIP CODE 85011	
DESCRIPTION OF OCCURRENCE SEE PAGES 2 & 3 OF THIS DOCUMENT.					
DESCRIBE DAMAGE TO PROPERTY NONE					
IF PERSON(S) INJURED, LIST THE FOLLOWING INFORMATION ON ALL INJURED PARTIES					
Name	Address	Description of Injury	DOB	Telephone	
1 SELF		WILSON INCARCERATION	() -		
2			() -		
RESPONDING POLICE AGENCY:			REPORT #:		
CLAIMANT VEHICLE INFORMATION					
Make	Model	Year	License Plate #		
NONE					
COUNTY VEHICLE INFORMATION					
Unit Number	Department	County Driver	License Plate #		
NONE					
IF WITNESSES ARE AVAILABLE, PROVIDE THE FOLLOWING INFORMATION					
Name	Address	Telephone			
1 REPORTER; TRANSCRIPT		() -			
2		() -			
Specific amount for which your claim can be settled: \$ 885,000					
Claimant signature: <u>M. H. Eitzmann</u>				Date: 5-21-2010	

This form is provided to assist in presenting a claim to Maricopa County that complies with the requirements of A.R.S. § 12-821.01, which defines the requirements for filing a claim against a public entity in the State of Arizona. It is important to complete all applicable items on the form in order to assure compliance with state law. Failure to do so may result in your claim being rejected. Filing a valid claim will always remain your sole responsibility. If your claim is contractual in nature, refer to the guidelines set forth in A.R.S. § 11-622.

The accompanying letter also contains the names and addresses of the persons authorized to accept service of the notice of claim form. It is your responsibility to identify the correct person, entity and/or entities against which your claim is being made, and file the notice of claim with them as required by A.R.S. § 12-821.01. You can mail the completed form.

If you have questions about this form or your claim, it is your responsibility to seek legal advice on your own and at your expense. Please do not call or otherwise contact any employee of Maricopa County or any employee of its officers, boards or districts, to seek assistance with filing a notice of claim or seek any other assistance with respect to your claim. No officer or employee of Maricopa County is authorized to provide legal advice or assistance with the preparation or filing of your claim. If you rely on any information furnished directly or indirectly by any officer or employee of Maricopa County, you do so at your own risk.

If your claim is in regards to a road condition, complete the Road Condition Supplement and mail it with this form.

HEITZMANN'S CASE

EXHIBIT B

CHRONOLOGY

EXHIBIT B

MAY 25, 2002:

A FORMER STUDENT OF MINE, PAUL SPEER,
COMMITTED A MURDER

POLICE REPORT: DR 2002-20952902

CASE NUMBER: CR 2002-010926

DECEMBER 13, 2006:

I TESTIFIED AT SPEER'S TRIAL.

THE COUNTY ATTORNEY [CA] CLAIMED THAT I
WAS SEXUALLY INVOLVED WITH SPEER.

DECEMBER 11, 2007:

THE CA CHARGED ME WITH PERJURY FOR
DENYING SEXUAL INVOLVEMENT WITH SPEER.

CASE NO: CR 2007-127543

REPORTER'S TRANSCRIPT, PAGE 47, LINES 12, 13.

DECEMBER 11, 2007 CONTINUED:

THE CA REALIZED SHE'D MADE A MISTAKE. MY
ALLEGED LIE WAS NOT MATERIAL AND THUS
CONSTITUTED FALSE SWEARING, NOT PERJURY.

THE CA ATTEMPTED TO CORRECT THE ERROR BY
INVOKING A 1984 DECISION: FIZANFI.

REPORTER'S TRANSCRIPT, PAGE 3, LINES 6-17.

HEITZMANN'S CASE
CHRONOLOGY

EXHIBIT B
EXHIBIT B

NOT ONLY DID THE CA FAIL TO PROVE THAT
I'D LIED ABOUT MY SEXUAL INVOLVEMENT
WITH SPER, BUT ALSO, THE USE OF FRANZI
WAS INCORRECT.

IN THE FRANZI CASE, THE ISSUE WAS CONFUSION
OVER STATE V.S. FEDERAL JURISDICTION, AND
HAD NO APPLICABILITY TO MY CASE.

AS A RESULT, I WAS IMPROPERLY CONVICTED
OF PERJURY ON DECEMBER 12, 2007 AND
SUFFERED 885 DAYS OF INCARCERATION FOR A
CRIME I DID NOT COMMIT.

I RESPECTFULLY REQUEST COMPENSATION IN
THE AMOUNT OF \$ 885,000 TO BE PAID IN
FULL BY AUGUST 30, 2010.

Albert K. Heitzmann

ALBERT K. HEITZMANN
MAY 21, 2010

ATTACHED: DECEMBER 11, 2007 REPORTER'S TRANSCRIPT,
PAGES 3 AND 47, 48.



EXHIBIT C

Maricopa County
Risk Management

222 N. Central Avenue
Suite 1110
Phoenix, Arizona 85004
Phone: (602) 506-2298
Fax: (602) 506-5939

June 28, 2010

Albert Heitzmann
PO Box 7227
Phoenix, Az 85011

Re: Notice of Claim against County Attorney
Date of Incident: December 2007
Our file: GL 19019450-36003

Dear Mr. Heitzmann:

Your claim is denied again. The statute of limitations has expired.

We cannot give legal advice. Should you have questions, it is your responsibility to seek legal advice on your own.

Sincerely,

A handwritten signature in cursive script that reads "Jeannie Bowman".

Jeannie Bowman
Senior Claim Adjuster
Maricopa County Risk Management